Calendar No. 866

98TH CONGRESS
2d Session

SENATE

REPORT
98-442

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION AUTHORIZATION

MAY 14, 1982.—Ordered to be printed

Mr. PACKWOOD, from the committee on Commerce, Science, Transportation, submitted the following

REPORT

[To accompany S. 2535]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2535) to provide authorization of appropriations for activities of the National Telecommunications and Information Administration, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF BILL

The legislation authorizes appropriations for the National Telecommunications and Information Administration (NTIA), the executive agency responsible for the development and presentation of domestic and international communications and information policy, for fiscal year 1985 at $15 million and for fiscal year 1986 at $15 million. The Committee emphasizes that the legislation also provides that these amounts shall be increased to provide for increases resulting from adjustments in salary, pay, retirement, and other employee benefits required by law and for other non-discretionary costs.

BACKGROUND AND NEEDS

NTIA was established in 1978 through the consolidation of the Office of Telecommunications Policy (OTP) in the Executive Office of the President and the Commerce Department's Office of Telecommunications. In addition, NTIA was given responsibility for ad-

31-010 O

S263-9

ministering the Public Telecommunications Facilities Program (PTFP).

NTIA's responsibilities include:

1. Serving as the principal executive branch adviser to the President on domestic and international telecommunications policy;

2. Developing and presenting executive branch policy on telecommunications and information services;

3. Prescribing policies for and managing the Federal Government's use of the radio frequency spectrum, in accordance with section 305 of the Communications Act of 1934, as amended (47 U.S.C. 305) (1976).

4. Developing, in conjunction with the Congress, the Federal Communications Commission (FCC), the Department of State, and other agencies, international telecommunications plans and policies and coordinating U.S. Government positions in and for international telecommunications meetings and conferences;

5. Serving as a Federal telecommunications research and study center, and providing technical support to other agencies primarily through the Institute for Telecommunications Sciences;

6. Administering the Public Telecommunications Facilities Program; and

7. Advising the Office of Management and Budget and other Federal agencies on policies governing the use and acquisition of telecommunications systems, services and products.

In carrying out these responsibilities, NTIA testifies before Congress, participates in FCC proceedings, and publishes technical, economic, and policy reports, for example, on broadcasting and cable television services, domestic and international communications, telephone rate and pricing policies, and transborder data flow.

NTIA's authorization was reduced from $16,500,000 in fiscal 1982 to $12,417,000 in 1983 and $12,771,000 in 1984. This was s significant reduction (about 25 percent). Congress anticipated that NTIA's workload would be reduced during 1983 and 1984 as a result of the Committee's efforts to deregulate many telecommunications services.

It is now apparent that although NTIA has reduced its functions in some areas, its role in other areas remains unchanged. In addition, in areas such as international telecommunications policy, NTIA's duties have increased and will continue to do so. This is due to the tremendous increase in international conferences and meetings regarding, for example, the provision of international telecommunications services and trade in telecommunications equipment.

The Committee expects NTIA to continue to provide leadership in preparations for and participation in major international conferences involving radio frequencies and the geostationary satellite orbit which impact on vital U.S. national interests. By law, NTIA is mandated to provide a vice chairman to all radio administrative conferences. Additionally, NTIA personnel are expected to continue to occupy other leadership positions at such conferences while also providing continuing expert technical assistance and support. It is

important that NTIA be prepared to undertake necessary activities associated with the following major conferences sponsored by the International Telecommunication Union during the balance of this decade:

1. 1985 Space World Administrative Radio Conference (1st Session);
2. 1986 AM Radio Broadcasting Conference for the Americas (1st Session);
3. 1987 High Frequency Broadcasting Conference (2nd Session);
4. 1987 Mobile Services World Administrative Radio Conference;
5. 1988 Space Conference (2nd Session); and
6. 1989 ITU Plenipotentiary Conference.

It is imperative that NTIA adequately prepare for the second session of the High Frequency (short wave) Broadcasting Conference by carrying out the extensive intersessional work program initiated by the first session of the High Frequency Conference in 1984. Achievement of satisfactory results at the second session is essential to preserving effective use of short wave broadcasting as an instrument of foreign policy. Similarly, vital U.S. interests are at stake in achieving satisfactory results at the 1985 and 1988 space conferences.

The Committee continues to be concerned about the federal government's ability to effectively formulate a coherent international telecommunications policy. The Committee is disturbed by the failure to resolve interdepartmental conflicts in a timely and efficient manner.

Much of the blame for the conflicts and the failure to resolve them expeditiously rests with Executive Order 12046 and its lack of clarity. Because of a "turf battle" between the Departments of Commerce and State in drafting the Executive order, the Executive order assigns overlapping responsibility to those departments. The Executive order names the Secretary of Commerce as the President's *principal advisor* on telecommunications policies and directs him to develop and set forth, in coordination with the Secretary of State, policies and programs which relate to international telecommunications issues. On the other hand, the Executive order gives the Secretary of State the *primary authority* for the determination of U.S. positions with respect to international bodies such as the International Telecommunications Union and the International Telecommunications Satellite Organization. (See Appendix A).

The problems fostered by E.O. 12046 were exacerbated by the Department of State in 1981. Deputy Secretary of State Clark, citing the 1977 charter for the Inter-Agency Task Force on Protecting Privacy [1] as his authority, sent out a memorandum indicating that the authority of this Task Force would be greatly expanded "to ensure effective interagency coordination of the United States for international communications and information issues" and that

[1] The Interagency Task Force on Protecting Privacy was established to handle a particular problem before the OECD (Organization for Economic Cooperation and Development) that developed after the decision to abolish OTP but before NTIA was established. This Task Force was given responsibility only for this privacy matter. (See Appendix B.)

the group would be chaired and controlled by the Department of State. (See Appendix C.) This action has questionable legal basis in light of E.O. 12046 with which it directly conflicts and it has only served to compound the interdepartmental disputes.

An example of the confusion caused by the Clark Memorandum and the lack of clarity in the Executive order is the recent process by which the executive branch sought to address the question of whether to authorize international communications satellite systems separate from Intelsat. Instead of resolving issues within the inter-Agency Group established by the Clark Memorandum, now called the Senior Inter-Agency Group, two separate recommendations were submitted to the President. The Senior Inter-Agency Group sent one set of recommendations to the President under its presumed authority, and the Secretary of Commerce sent still another set to the President under his authority, as the President's principal adviser on telecommunications, as well as his authority over international telecommunications issues. The Secretary of Commerce's authority derived from Executive Order 12046.

In the Committee's view, the "Clark memorandum" of July 10, 1981, was and continues to be an unsanctioned effort to restructure international communications policymaking functions in contravention of Executive Order 12046.

Further, the Committee believes that the issues in international telecommunications are too important to the public, the business community, and our national security interests to be mishandled and subjected to delays by disputes over which federal agency has primary responsibility on a particular issue. The Committee will continue to closely follow these matters and will determine whether the situation can be improved administratively or whether statutory action is necessary, such as enactment of S. 999, the "International Telecommunications Act of 1983," which clearly establishes departmental responsibility.

The Committee believes NTIA should take a lead role in developing and supporting the U.S. telecommunications industry in both domestic and international markets. With the diversiture of AT&T—the elimination of a major nontariff barrier in the domestic telecommunications market—and the rising challenge from foreign firms, many of which are directly or indirectly controlled or supported by their governments, the Federal Government must establish a longrange trade position that will promote and benefit the U.S. telecommunications industry. The Committee believes NTIA can make a valuable contribution in developing an open world telecommunications market by assisting the International Trade Administration and the U.S. Trade Representative in this regard.

The Committee expects NTIA to continue to offer its expert advice in any major proceeding before the FCC. Congress also continues to rely on NTIA for prompt and thorough analyses of legislative issues. The Committee expects that NTIA will maintain adequate staff and expertise to respond both to Congressional request and participate in major proceedings.

The Committee notes that in 1983, the Senate Appropriations Committee in S. 2956 (S. Rept. No. 97-584, September 24, 1982) directed NTIA to "conduct a comprehensive study of the Federal use

of the radio spectrum during fiscal 1983 with the goal of more efficiently using the scarce spectrum resource and reallocating to private sector use those portions of the spectrum not necessary for efficient operation of the Federal Government."

The Committee is aware that NTIA has given considerable time and effort toward achieving the goals of this study. The Committee expects NTIA to pursue its directive and to take actions necessary to ensure that Federal spectrum is used as efficiently as possible.

The Committee further expects NTIA to continue to administer effectively the Public Telecommunications Facilities Program. Recently, the Committee substantially increased PTFP funding to $50 million for fiscal year 1985, $53 million for fiscal year 1986, and $56 million for fiscal year 1987 (see S. 2436). The PTFP has aided the provision of public broadcasting throughout the United States, but there are areas where this valuable service is not yet available. The Committee believes the level of funding it authorized for 1985, 1986, and 1987 will accomplish the goal of bringing service to these areas and will allow existing public telecommunications facilities to be replaced and improved, an important function if public broadcasting is to continue to provide high quality service to the public.

In order for NTIA to meet the Committee's expectations, set forth in this report, the Committee has increased NTIA's authorization for 1985 and 1986. Additional funds for 1986 will be authorized if the Committee finds NTIA needs such funds in order to fully accomplish its functions.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congresssional Budget Ofice:

U.S. Congress,
Congressional Budget Office,
Washington, D.C. April 25, 1984.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2535, a bill to provide authorization of appropriations for activities of the National Telecommunications and Information Administration.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner.

Congressional Budget Office Cost Estimate

1. Bill Number: S. 2535.

2. Bill title: A bill to provide authorization of appropriations for activities of the National Telecommunications and Information Administration.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, April 10, 1984.

4. Bill purpose: S. 2535 authorizes the appropriation of $15 million in each of the fiscal years 1985 and 1986, plus such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, to carry out the activities of the National Telecommunications and Information Administration (NTIA).

Appropriations to date in fiscal year 1984 for NTIA are $12.8 million. The President is requesting $13.9 million in 1985 for this purpose.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1985	1986	1987	1988	1989
Authorization level:					
Specified (function 370)	15.0	15.0			
Estimated (function 920)	0.3	0.5			
Total	15.3	15.5			
Estimated outlays	10.7	13.9	4.6	1.6	

Basis of estimate: For purposes of this estimate it was assumed that the amounts authorized in the bill for 1985 and 1986 would be appropriated prior to the beginning of each fiscal year. In addition, pay and other benefit increases of approximately $0.3 million in 1985 and $0.5 million in 1986 were estimated based on CBO's baseline projections. Outlays reflect historical spending patterns.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Mary Maginniss.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

S. 2535, as reported, reflects a minor increase in funding for NTIA from the levels of previous years. The additional funds will be used to improve U.S. preparation for international telecommunications conferences and meetings and will have no impact on the regulatory arena.

Section-by-Section Analysis

S. 2535 authorizes appropriations for the NTIA at $15 million for fiscal year 1985 and at $15 million for fiscal year 1986. The amounts shall be increased to provide for increases resulting from adjustments in salary, pay, retirement and other employee benefits required by law and for other nondiscretionary costs.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

Appendix A

Executive Order 12046, March 27, 1978

Relating to the Transfer of Telecommunications Functions

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)), the authority and control vested in the President by Section 2 of Executive Order No. 11556, as amended, Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the transfer of certain telecommunications functions, it is hereby ordered as follows:

Section 1

REORGANIZATION PLAN

1-1. *Implementation of Reorganization Plan*

1-101. The transfer of all the functions of the Office of Telecommunications Policy and of its Director, as provided by Section 5B of Reorganization Plan No. 1 of 1977 (42 FR 56101), is hereby effective.

1-102. The abolition of the Office of Telecommunications Policy, as provided by Section 3C of Reorganization Plan No. 1 of 1977, is hereby effective.

1-103. The establishment of an Assistant Secretary for Communications and Information, Department of Commerce, as provided by Section 4 of Reorganization Plan No. 1 of 1977, is hereby effective.

1-2. *Telecommunications Function*

1-201. Prior to the effective date of Reorganization Plan No. 1 of 1977, the Office of Telecommunications Policy and its Director had the functions set forth or referenced by: (1) Section 1 of Reorganization Plan No. 1 of 1970 (5 U.S.C. App. II). (2) Executive Order No. 11556 of September 4, 1970, as amended (47 U.S.C. 305 note). (3) Executive Order No. 11191 of January 4, 1965, as amended (47 U.S.C. 721 note). (4) Executive Order No. 10705 of April 17, 1957, as amended (47 U.S.C. 606 note), and (5) Presidential Memorandum of August 21, 1963, as amended by Executive Order No. 11556 and entitled "Establishment of the National Communications System."

1-202. So much of those functions which relate to the preparation of Presidential telecommunications policy options or to the disposition of appeals from assignments of radio frequencies to stations of the United States Government were transfered to the President. These functions may be delegated within the Executive

Office of the President and the delegations are set forth in this Order at Sections 3–1 through 4–3.

1–203. Those telecommunications functions which were not transferred to the President were transferred to the Secretary of Commerce. Functions transferred to the Secretary are set forth in this Order at Sections 2–1 through 2–5.

SECTION 2

FUNCTIONS TRANSFERRED TO COMMERCE

2–1. *Radio Frequencies*

2–101. The authority of the President to assign frequencies to radio stations or to classes of radio stations belonging to and operated by the United States, including the authority to amend, modify, or revoke such assignments, was transferred to the Secretary of Commerce.

2–102. This authority, which was originally vested in the President by Section 305(a) of the Communications Act of 1934, as amended (47 U.S.C. 305(a)), was transferred and assigined to the Director of the Office of telecommunications Policy by Section 1 of Reorganization Plan No. 1 of 1970 and Section 3 of Executive Order No. 11556.

2–103. The authority to assign frequencies to radio stations is subject to the authority to dispose of appeals from frequency assignments as set forth in Section 3–2 of this Order.

2–2. *Construction of Radio Stations*

2–201. The authority to authorize a foreign government to construct and operate a radio station at the seat of government of the United States was transferred to the Secretary of Commerce. Authorization for the construction and operation of a radio station pursuant to this authority and the assignment of a frequency for its use can be made only upon recommendation of the Secretary of State and after consultation with the Attorney General and the Federal Communications Commission.

2–202. This authority, which was originally vested in the President by Section 305(d) of the Communications Act of 1934, as amended (47 U.S.C. 305), was delegated to the Director of the Office of Telecommunications Policy by Section 5 of Executive Order No. 11556.

2–3. *Communications Satellite System*

2–301. Certain functions relating to the communications sattellite system were transferred to the Secretary of Commerce. Those functions were delegated or assigned to the Director of the Office of Telecommunications Policy by Executive Order No. 11191, as amended by Executive Order 11556. The functions include authority vested in the President by Section 201(a) of the Communications Satellite Act of 1962 (76 Stat. 421, 47 U.S.C. 721(a)). These functions are specifically set forth in the following provisions of this Section

(a) Aid in the planning and development of the commercial communications satellite system and aid in the execution of a national program for the operation of such a system.

(b) Conduct a continuous review of all phases of the development and operation of such system, including the activities of the Corporation.

(c) Coordinate, in consultation with the Secretary of State, the activities of governmental agencies with responsibilities in the field of telecommunications, so as to insure that there is full and effective compliance at all times with the policies set forth in the Act.

(d) Make recommendations to the President and others as appropriate, with respect to all steps necessary to insure the availability and appropriate utilization of the communications satellite system for general government purposes in consonance with Section 201(a)(6) of the Act.

(e) Help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the communications satellite system with existing communications facilities both in the United States and abroad.

(f) Assist in the preparation of Presidential action documents for consideration by the President as may be appropriate under Section 201(a) of the Act, make necessary recommendations to the President in connection therewith, and keep the President currently informed with respect to the carrying out of the Act.

(g) Serve as the chief point of liaison between the President and the Corporation.

(h) The Secretary of Commerce shall timely submit to the President each year the report (including evaluations and recommendations) provided for in Section 404(a) of the Act (47 U.S.C. 744(a)).

(i) The Secretary of Commerce shall coordinate the performance of these functions with the Secretary of State. The Corporation and other concerned Executive agencies shall provide the Secretary of Commerce with such assistance, documents, and other cooperation as will enable the Secretary to carry out these functions.

2-4. *Other Telecommunications Functions*

Certain functions assigend, subject to the authority and control of the President to the Director of the Office of Telecommunications Policy by Section 2 of Executive Order No. 11556 were transferred to the Secretary of Commerce. These functions, subject to the authority and control of the President, are set forth in the following subsections.

2-401. The Secretary of Commerce shall serve as the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

2-402. The Secretary of Commerce shall advise the Director of the Office of Management and Budget on the development of policies relating to the procurement and management of Federal telecommunications systems.

2-403. The Secretary of Commerce shall conduct studies and evaluations concerning telecommunications research and development, and concerning the initiation, improvement, expansion, testing, operation, and use of Federal telecommunications systems. The Secretary shall advise appropriate agencies, including the Office of Management and Budget, of the recommendations which result form such studies and evaluations.

2-404. The Secretary of Commerce shall develop and set forth, in coordination with the Secretary of State and other interested agencies, plans, policies, and programs which relate to international telecommunications issues, conferences, and negotiations. The Secretary of Commerce shall coordinate economic, technical, operational and related preparations for United States participation in international telecommunications conferences and negotiations. The Secretary shall provide advice and assistance to the Secretary of State on international telecommunications policies to strengthen the position and serve the best interests of the United States, in support of the Secretary of State's responsibility for the conduct of foreign affairs.

2-405. The Secretary of Commerce shall provide for the coordination of the telecommunications activities of the Executive Branch, and shall assist in the formulation of policies and standards for those activities, including but not limited to considerations of interoperability, privacy, security, spectrum use and emergency readiness.

2-406. The Secretary of Commerce shall develop and set forth telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

2-407. The Secretary of Commerce shall ensure that the Executive Branch views on telecommunications matters are effectively presented to the Federal Communications Commission and, in coordination with the Director of the Office of Management and Budget, to the Congress.

2-408. The Secretary of Commerce shall establish policies concerning spectrum assignments and use by radio stations belonging to and operated by the United States. Agencies shall consult with the Secretary of Commerce to ensure that their conduct of telecommunications activities is consistent with those policies.

2-409. The Secretary of Commerce shall develop, in cooperation with the Federal Communications Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources.

2-410. The Secretary of Commerce shall conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology.

2-411. The Secretary of Commerce shall coordinate Federal telecommunications assistance to State and local governments.

2-412. The Secretary of Commerce shall conduct and coordinate economic and technical analyses of telecommunications policies, activities, and opportunities in support of assigned responsibilities.

2-413. The Secretary of Commerce shall contract for studies and reports related to any aspect of assigned responsibilities.

2-414. The Secretary of Commerce shall participate with the National Security Council and the Director of the Office of Science and Technology Policy in carrying out their functions under Sections 4-1, 4-2, and 4-3 of this Order, and may perform specific staff services for them as requested.

2-5. *Consultation Responsibilities*

2-501. The authority to establish coordinating committees, as assigned to the Director of the Office of Telecommunications Policy by Section 10 of Executive Order No. 11556, was transferred to the Secretary of Commerce.

2-502. As permitted by law, the Secretary of Commerce shall establish such interagency committees and working groups composed of representatives of interested agencies, and shall consult with such departments and agencies as may be necessary for the most effective performance of his functions. To the extent he deems it necessary to continue the Interdepartment Radio Advisory Committee, that Committee shall serve in an advisory capacity to the Secretary. As permitted by law, the Secretary also shall establish one or more telecommunications advisory committees composed of experts in the telecommunications area outside the Government.

SECTION 3

FUNCTIONS ASSIGNED TO THE OFFICE OF MANAGEMENT AND BUDGET

3-1. *Telecommunications Procurement and Management*

3-101. The responsibility for serving as the President's principal adviser on procurement and management of Federal telecommunications systems and the responsibility for developing and establishing policies for procurement and management of such systems, which responsibilities were assigned to the Director of the Office of Telecommunications Policy subject to the authority and control of the President by Section 2(b) of Executive Order No. 11556, were transferred to the President.

3-102. These functions are delegated to the Director of the Office of Management and Budget.

3-2. *Radio Frequency Appeals*

3-201. The authority to make final disposition of appeals from frequency assignments by the Secretary of Commerce for radio stations belonging to and operated by the United States, which authority was vested in the President by Section 305(a) of the Communications Act of 1934 (47 U.S.C. 305(a)) and transferred to the Director of the Office of Telecommunications Policy by Reorganization Plan No. 1 of 1970 (5 U.S.C. App. II), was transferred to the President.

3-202. This function is delegated to the Director of the Office of Management and Budget.

SECTION 4

FUNCTIONS ASSIGNED TO THE NATIONAL SECURITY COUNCIL AND THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY

4-1. *Emergency Functions,*

4-101. The war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), which were delegated to the Director of the Office of Telecommuni-

cations Policy by the Provisions of Section 4 of Executive Order No. 10705, were transferred to the President.

4-102. The Director of the Office of Science and Technology Policy shall prepare to direct the exercise of these functions, and the National Security Council shall prepare to exercise appropriate policy direction, should the President so instruct. These instructions would be given in accordance with the National Emergencies Act (90 Stat. 1255, 50 U.S.C. 1601).

4-103.The Director of the Office of Science and Technology Policy shall prepare Presidential policy options with respect to the evaluation by appropriate means, including suitable tests, of the capability of existing and planned communications systems to meet national security and emergency preparedness requirements, and report the results and any recommended remedial actions to the President and the National Security Council.

4-2. *National Communications System*

4-201. The responsibility for policy direction of the development and operation of a National Communications system, which was assigned to the Director of the Office of Telecommunications Policy by the Presidential Memorandum of August 21, 1963, as amended by Executive Order No. 11556, was transferred to the President.

4-202. The function is more particularly, identified, and is delegated to the National Security Council, in the amendments made by Section 6-101 of this Order to the President's Memorandum of August 21, 1963.

4-3. *Planning Functions*

4-301. The function of coordinating the development of policy, plans, programs, and standards for the mobilization and use of the Nation's telecommunications resources in any emergency, which function was assigned to the Director of the Office of Telecommunications Policy subject to the authority and control of the President by Section 2(h) of the Executive Order No. 11556, was transferred to the President.

4-302. The National Security Council shall assist the President in the performance of this function.

SECTION 5

RELATED TELECOMMUNICATIONS FUNCTIONS

5-1. *The Department of Commerce*

5-101. The Secretary of Commerce shall continue to perform the following functions previously assigned by Section 13 of Executive Order No. 11556:

(a) Perform analysis, engineering, and administrative functions, including the maintenance of necessary files and data bases, as necessary in the performance of assigned responsibilities for the management of electromagnetic spectrum.

(b) Conduct research and analysis of electromagnetic propagation, radio systems characteristics, and operating techniques affecting the utilization of the electromagnetic spectrum in coordination

with specialized, related research and analysis performed by other Federal agencies in their areas of responsibility.

(c) Conduct research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies.

5-102. The Secretary of Commerce shall participate, as appropriate, in evaluating the capability of telecommunications resources, in recommending remedial actions, and in developing policy options.

5-2. *Department of State*

5-201. With respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this responsibility the Secretary of State shall coordinate with other agencies as appropriate, and, in particular, shall give full consideration to the Federal Communications Commission's regulatory and policy responsibility in this area.

5-202. The Secretary of State shall continue to perform the following functions previously assigned by Executive Order No. 11191, as amended:

(a) Exercise the supervision provided for in Section 201(a)(4) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 721(a)(4)); be responsible, although the Secretary of Commerce is the chief point of liaison, for instructing the Communications Satellite Corporation in its role as the designated United States representative to the International Telecommunications Satellite Organization; and direct the foreign relations of the United States with respect to actions under the Communications Satellite Act of 1962, as amended.

(b) Coordinate, in accordance with the applicable interagency agreements, the performance of these functions with the Secretary of Commerce, the Federal Communications Commission, other concerned Executive agencies, and the Communications Satellite Corporation (see 47 U.S.C. 731-735). The Corporation and other concerned Executive agencies shall provide the Secretary of State with such assistance, documents, and other cooperations as will enable the Secretary to carry out these functions.

5-3. *General Services Administration*

The Administrator of General Services shall coordinate with the Secretary of Commerce, the Director of the Office of Science and Technology Policy, and the National Security Council the development of policies, plans, programs, and standards for the emergency use of telecommunications.

SECTION 6

GENERAL PROVISIONS

6-1. *Transfer Provisions*

6-101. In order to reflect the transfer and assignment made by Section 5B of Reorganization Plan No. 1 of 1977 and Section 13 of this Order, the President's Memorandum of August 21, 1963, entitled "Establishment of the National Communications System" (28 FR 9413, 3 CFR 1959-1963 Compilation) as amended by Section 8 of Executive Order No. 11556, is further amended as follows:

(a) Delete the first paragraph after the heading "Executive Office Responsibilities" and substitute therefor:

"The National Security Council shall be responsible for Presidential policy options concerning the development and operation of the National Communications System (NCS) and shall:".

(b) Delete the last two paragraphs in that part of the memo headed "Executive Office Responsibilities" and substitute therefor:

"In performing these functions, the National Security Council will consult with the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the Office of Science and Technology Policy, and the Administrator of General Services, as appropriate; will establish arrangements for interagency consultation to ensure that the NSC will meet essential needs of all government agencies; and will be responsible for carrying on the work formerly done by the Subcommittee on Communications of the Executive Committee of the National Security Council. In addition to staff regularly assigned, the National Security Council and the Director of the Office of Science and Technology Policy may arrange for the detail or temporary assignment of communications and other specialists from any agency.

"The Director of the Office of Management and Budget, in consultation with the National Security Council, the Secretary of Commerce, the Administrator of General Services, and the Executive Agent of the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies.".

(c) In the paragraph after the heading "Agency Responsibilities", delete "Director of the Office of Telecommunications Policy" and substitute therefor "National Security Council."

6-102. The primary responsibility for performing all administrative support and service functions that are related to functions transferred from the Office of Telecommunications Policy and its Director to the President, including those functions delegated or assigned within the Executive Office of the President, are transferred to the Office of Administration. The Domestic Policy Staff shall perform such functions related to the preparation of Presidential telecommunications policy options as the President may from time to time direct.

6-103. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, assigned, or delegated as provided in this Order are hereby transferred as appropriate.

6-104. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided in this Order, including the transfer of funds, records, property, and personnel.

6-2. *Amendments*

In order to reflect the transfers provided by this Order, the following conforming amendments and revocations are ordered:

6-201. Section 306 of Executive Order No. 11051, as amended, is further amended to read:

"Sec. 306. *Emergency telecommunications.* The Administrator of General Services shall be responsible for coordinating with the National Security Council in planning for the mobilization of the nation's telecommunications resources in time of national emergency.".

6-202. Executive Order No. 11490, as amended is further amended by:

(1) substituting "National Security Council" for "Office of Telecommunications Policy (35 FR 6421)" in Section 401(27), and

(2) substituting the number of this Order for "11556" and deleting references to Executive Order No. 10705 in Sections 1802 and 2002(3).

6-203. Executive Order No. 11725, as amended, is further amended by substituting the number and date of this Order for the reference to Executive Order No. 11556 of September 4, 1970 in Section 3(16).

6-204. Executive Orders No. 10705, as amended, No. 11191, as amended, and No. 11556, as amended, are revoked.

6-3. *General*

6-301. All Executive agencies to which functions are assigned pursuant to this Order shall issue such rules and regulations as may be necessary to carry them out.

6-302. All Executive agencies are authorized and directed to cooperate with the departments and agencies to which functions are asigned pursuant to this Order and to furnish them such information, support and assistance, not inconsistent with law, as they may require in the performance of those functions.

6-303. (a) Nothing in this Order reassigns any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended, nor does anything in this Order impair the existing authority of the Administrator of General Services to provide and operate telecommunications services and to prescribe policies and methods of procurement, or impair the policy and oversight roles of the Office of Management and Budget.

(b) In carrying out the functions in this Order, the Secretary of Commerce shall coordinate activities as appropriate with the Federal Communications Commission and make appropriate recommendations to it as the regulator of the private sector. Nothing in this Order reassigns any function vested by law in the Federal Communications Commission.

6-304. This Order shall be effective March 26, 1978.

JIMMY CARTER.

THE WHITE HOUSE, *March 27, 1978.*

APPENDIX B

THE WHITE HOUSE,
Washington, September 13, 1977.

MEMORANDUM FOR

The Secretary of State, The Secretary of Defense, The Attorney General, The Secretary of Commerce, The Director, Office of Management and Budget, The Director, Office of Science and Technology Policy, The Director, Office of Telecommunications Policy, The Director, National Science Foundation, The Chairman, Federal Communications Commission.

Subject: Inter-Agency Task Force on Protecting Privacy in International Data Processing.

Responsibility for reviewing issues and developing options for U.S. Government positions on privacy protection in international processing of data is assigned to the Inter-Agency Task Force on OECD Work on Information, Computers, and Communication Policy established by the Department of State. The Task Force will be chaired by the Assistant Secretary of State for the Bureau of Oceans and International Environmental and Scientific Affairs. Members of the Task Force will include representatives of the addressees and the National Security Council. Policy issues requiring the President's decision, or issues which cannot be resolved at the Inter-Agency Task Force level should be forwarded to the Policy Review Committee.

DAVID AARON,
Deputy Assistant to the President
for National Security Affairs.

APPENDIX C

THE DEPUTY SECRETARY OF STATE
Washington, July 10, 1981.

Original to: Prin memo file.

To Secretary of Commerce, Secretary of Defense, Administrator, National Aeronautics and Space Administration, Chairman, Federal Communications Commission, Chairman, Board for International Broadcasting, Administrator, Agency for International Development, Director, International Communication Agency, U.S. Trade Representative, Director, Office of Management and Budget, Director, Office of Science and Technology Policy.

Subject: International Communications and Information Policy.

This subject is of major importance to U.S. foreign policy. A vast array of activities exists and each is attracting increasing attention and assuming greater significance for U.S. international interests. At issue are the serious concerns of the free world's news media for certain programs of UNESCO, U.S. efforts in the OECD to mini-

mize national restrictions on transborder data flows, the practical international management of the electromagnetic frequency spectrum in the ITU, and the operating principles of communication and remote sensing satellite systems in the UN. It is important that adequate U.S. Government resources and attention be given these matters and that U.S. policy be coordinated effectively.

The Department of State has been providing interagency policy coordination for activities through an NSC Working Group chartered in 1977 and chaired during 1980 by Matthew Nimetz, Under Secretary of State. I have asked Under Secretary James L. Buckley to continue this role by chairing an Interdepartmental Group (IG) of senior agency representatives. The task of this Group is to ensure effective interagency coordination of U.S. policy for international communication and information issues. The IG will continue to work through the existing interagency working groups and their supporting public advisory mechanisms and create other such groups as may be required.

The first meeting of the Group is scheduled for Monday, July 13, 1981 at 10:30 a.m., at the Department of State. Please advise Mr. Buckley's office (Tel. No. 632-8724) of your senior representative. The agenda and papers for the first meeting will be sent to that person prior to the meeting.

WILLIAM P. CLARK.

PRIMARY MEMBERS, IG—INTERNATIONAL COMMUNICATION AND INFORMATION POLICY

State: Honorable James L. Buckley, Chairman, Under Secretary of State for Security Assistance, Science and Technology, Room 7208, DC 20520, 632-0410.

Commerce: Assistant Secretary Bernard J. Wunder, Jr., Department of Commerce, 14th and Constitution, Room 4885, DC 20230, 377-1840.

FCC: Honorable Mark Fowler, Chairman, Federal Communications Commission, 1919 M Street, N.W., Room 832, DC 20554, 632-6600.

DOD: Mr. Donald C. Latham, Deputy Under Secretary of Defense, [C^{3}I] TPO, 3E172, The Pentagon, DC 20301, 695-0348.

USTR: Mr. Geza Feketekuty, U.S. Trade Representative, Executive Office of the President, 600—17th Street, N.W., Room 103, DC 20506, 395-3582.

OMB: Mr. Jim J. Tozzi, Deputy Administrator, Information and Regulatory Affairs, Office of Management and Budget, 3236 New Executive Office Building, DC 20503, 395-5897.

NSC: Mr. Carnes Lord, National Security Council, 365 Old Executive Office Building, DC 20500, 395-4684.

Policy Development: Mr. Ronald B. Frankum, Deputy Director, Office of Policy Development, 216 Old Executive Office Building, DC 20500, 456-2562.

ICA: Mr. Gilbert A. Robinson, Assistant Director, International Communication Agency, 1750 Pennsylvania Avenue, N.W., Room 700, DC 20547, 724-9185.

OSTP: Col. Wayne Kay, Office of Science and Technology Policy, 479 Old Executive Office Building, DC 20500, 395-3272.

NASA: Mr. Kenneth S. Pedersen, Director of International Affairs, LI 15, National Aeronautics and Space Administration, DC 20546, 755-3868.

BIB: Mr. Frank Shakespeare, Chairman, Board for International Broadcasting, Suite 430, 1030—15th Street, N.W., DC 20005, 254-8040. (Walter R. Roberts, Executive Director.)

AID: Mr. Curtis Farrar, Acting Senior Administrator, Agency for International Development, 320—21st Street, N.W., Room 4942, DC 20523, 632-4322.

Mr. William C. Salmon, Executive Secretary, Senior Adviser for Science and Technology, T—Room 7208, Department of State, DC 20520, 632-8724.

Interagency Working Groups in Communications and Information

I. Interagency Group on International Communication and Information Policy

Senior-level interagency policy review group chaired by State Under Secretary. Coordinates work of the several groups. Meets quarterly. (1980)

II. Transborder data flow

A. Interagency Task Force on Transborder Data Flows: State/EB Chairman Arthur Freeman. The major effort has been preparation for OECD meetings dealing with TBDF. (1974)

B. Advisory Committee on International Investment, Technology and Development: Working Group on Transborder Data Flow: EB's public advisory committee on multinationals: working group on TBDF, has 50 plus members; contributes to OECD meeting preparations. Hugh Donaghue. (1975)

III. ITU related

A. Preparatory Committee for the 1982 International Telecommunication Union (ITU) Plenipotentiary Conference: Chaired by EB, Arthur Freeman; interagency; began in February 1980.

B. United States Organization for International Telegraph and Telephone Consultative Committee (CCITT): Chaired by EB, Richard Howarth; public advisory group including agency reps; about 200 members. CCITT is a permanent organ of the ITU. (Several years in operation.)

C. United States Organization for the International Radio Consultative Committee (CCIR): Chaired by EB, Gordon Huffcutt; public advisory group including agency reps; about 425 members. CCIR is a permanent organ of the ITU. (Several years in operation.)

IV. UN, UNESCO-related

A. IO Interagency Working Group on Information and Communications: Chaired by IO, Nicholas Platt; interagency; deals with initiatives in UNESCO and the UN Committee on Information, a subsidiary of the General Assembly; i.e., New World Information Order, free flow of information, UNESCO Mass Media Declaration, efforts to restrict the free press through licensing of journalists and

codes of ethics, North-South communications/information issues, including communications development.

B. Interagency Group on Legal Subcommittee of UN Outer Space Committee: Chaired by L. David Small; interagency; prepares for subcommittee meetings; subjects include legal principles for direct broadcasting by satellites and remote sensing.

C. Interagency Group on S&T Subcommittee of UN Outer Space Committee: Chaired by OES/NASA, Charles Horner; interagency; prepared for subcommittee meetings; subjects include remote sensing systems.

V. Other groups in which State participates

Interdepartmental Radio Advisory Committee: Chaired by NTIA; EB represents State; interagency; assignments of radio frequencies for government agencies use; ITU radio frequency management issues.

○

Calendar No. 867

98TH CONGRESS, 2d Session | SENATE | REPORT 98-443

CARRIAGE OF MAIL ON VESSELS OF U.S. REGISTRY

MAY 14, 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 188]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 188) to further the development and maintenance of an adequate and well-balanced American merchant marine by requiring that certain mail of the United States be carried on vessels of U.S. registry, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 188, as reported, would add a new section to title IV of the Merchant Marine Act, 1936, that requires the Postal Service to use vessels of U.S. registry, if available, to originate any international sea transportation of mail.

BACKGROUND AND NEEDS

A general requirement that U.S. mail carried by vessel be transported on U.S.-flag ships first appeared in law in 1920 (41 Stat. 998). That requirement was continued in the Merchant Marine Acts of 1928 and 1936. The provisions of the 1920 and 1936 acts remained in force until 1960 when Congress passed a complete revision of the Post Office's statutes in title 39 of the United States Code (49 Stat. 1985). This revision included a provision very similar to section 405(a) of the Merchant Marine Act, 1936, requiring U.S. mails to be carried by U.S.-flag ships.

31-010 O

S263-10

In 1970, Congress again passed a complete revision of title 39 creating the U.S. Postal Service (Public Law 91–375). It did not contain a provision comparable to the previous U.S.-flag preference. No explanation for this omission was provided in either the Senate or House committee reports (S. Rept. 91–912; H. Rept. 91–1104). However, the Postal Service continued the policy by a regulation in the Postal Contracting Manual.

In 1981, the Postal Service deleted this regulation from the manual with no notice or hearing. This action terminated the longstanding policy of the Government to entrust the U.S. mail to American carriers. Since that time, the carriage of U.S. mail by ship has been dominated by foreign-flag operators including Soviet bloc ships. The committee finds that reinstatement of the U.S.-flag preference will enhance the objective of the Merchant Marine Act, 1936, to foster the development and encourage the maintenance of the U.S. Merchant Marine.

The Postal Service estimates that it would have spent an additional $1,400,000 if this bill had been enacted for fiscal year 1983. This estimate is based on an average differential between bids submitted by U.S.-flag and foreign-flag carriers.

Legislative History

S. 188 was introduced by Senator Inouye on January 26, 1983. Hearings were held on the bill on September 27 and 29, 1983, by the Committee on Commerce, Science, and Transportation. Witnesses included the U.S. Postal Service, the Maritime Administration, major U.S. shipping companies, Shipbuilders Council of America, Marine Engineers Beneficial Association, Maritime Trades Department of the AFL–CIO, and the U.S. Chamber of Commerce. The committee also received several written statements for the record. On April 10, 1984, the committee ordered S. 188 reported with an amendment in the nature of a substitute.

Summary of the Bill

As reported, S. 188 would:

1. require the use of vessels of U.S. registry to originate any international sea transportation of U.S. mail;
2. require contracts for carriage of mail by vessels of U.S. registry to be competitive and limited to 1 year; and
3. prevent the Postal Service, with minor exception, from contracting for the use of cargo containers on the basis of container size.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act

of 1974, the committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 8, 1984.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 188, a bill to further the development and maintenance of an adequate and well-balanced American merchant marine by requiring that certain mail of the United States be carried on vessels of U.S. registry, as ordered reported by the Senate Committee on Commerce, Science and Transportation, April 10, 1984.

We expect that enactment of this bill could cost the U.S. Postal Service [USPS], an off-budget agency of the Federal Government, an additional $5 million to $6 million annually. Any increase in cost to the USPS would ultimately be recovered by increases in postal rates.

Based on 1983 data from the Postal Service, the average differential between the bids made by vessels of the U.S. registry and foreign vessels was 38 percent, and total shipping expenses were approximately $15 million. Although the cost of shipping mail, primarily packages and catalogs, is expected to increase annually, the volume of this category of mail is decreasing, suggesting a relatively constant annual expense for this purpose for the next several years. As a result, if the Postal Service were required to use U.S. vessels exclusively when available, the Postal Service would likely incur additional costs in the range of $5 million to $6 million annually, assuming that bids would average about 38 percent higher than would otherwise have been the case. The cost would be borne primarily by mailers and would be reflected in an increase in postal rates. The Federal Government, as a mail user, would be required to pay higher postage rates as well, but that amount is not likely to be significant.

Enactment of this legislation is not expected to result in any significant costs to state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In acordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee provides the following evaluation of the regulatory impact of the legislation, as reported.

Enactment of S. 188 would bring rates charged by U.S. shipping companies for carriage of U.S. international mail under regulation by

the Federal Maritime Commission [FMC]. However, current FMC regulations exempt contacts for carriage of mail in the foreign commerce from tariff filing requirements.

The role of the FMC will largely be limited to investigating violations of the Shipping Act of 1984 upon complaint or its own motion. Given the small number of contracts and the competitive award process, it is likely that S. 188 will have a negligible regulatory impact.

NUMBER OF PERSONS COVERED

All U.S. ocean common carriers are presently regulated by the Shipping Act of 1984. S. 188 will not increase the number of persons covered by the act.

ECONOMIC IMPACT

S. 188 imposes little, if any, additional duty on the FMC or places no new burdens on ocean common carriers.

PRIVACY

S. 188 will have no effect on the privacy of individuals affected by the bill.

PAPERWORK

No additional reporting requirements are imposed by regulating international mail contract rates under the Shipping Act of 1984.

Section-by-Section Analysis

SECTION 1

Section 1 adds a new section 405 to the Merchant Marine Act, 1936.

Proposed section 405(a) requires the Postal Service to contract for the use of vessels of U.S. registry to originate the international transportation of U.S. mail if the vessel operator provides regular transportation services to the specified destination. The Postal Service is not required to enter into such contracts if there are no available vessels or if these vessels cannot provide service sufficient to meet the actual needs of the Postal Service. Actual needs are those terms and conditions of service which are reasonable in light of commercial practice within a given trade.

Proposed section 405(b) requires that rates for carriage of mail under subsection (a) must comply with the provisions of the Shipping Act of 1984, which provides for a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States. A U.S. ocean carrier may not charge a higher rate for carrying the mail than it charges for carrying like goods for private persons. The committee notes that mail, particularly fourth-class mail, can be a heterogeneous commodity. Therefore, the term "like goods" refers to cargoes of similar but not necessarily identical characteristics. This provision is not intended to set a carrier's "not otherwise specified" tariff as the rate ceiling for the carriage of mail.

Proposed section 405(c) requires that contracts under subsection (a) be awarded by competitive bidding. The committee intends that the term "competitive bidding" include both advertised bids and negotiated contracts. Contracts are limited to a 1-year duration. These requirements are limitations placed on the Postal Service's broader grant of contract authority found at 39 U.S.C. 5605.

Proposed section 405(d) precludes the Postal Service from contracting for the use of cargo containers on the basis of container size, unless required by the physical handling limitations of the destination.

Proposed section 405(e) contains a definition of "common carrier".

SECTION 2

Section 2 exempts section 405 of the Merchant Marine Act, 1936, from a provision in title 39, United States Code, which makes public or Federal contract laws not applicable to the Postal Service.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

The Merchant Marine Act, 1936

TITLE IV OF THAT ACT

Sec. 401.–Sec. 404. * * *

Sec. 405. (a) The Postal Service shall contract for the use of vessels of United States registry to originate any international sea transportation of mail of the United States in any case in which the common carrier which operates or controls such vessel is engaged in the provision of regular transportation services to the destination specified by the Postal Service. The Postal Service shall not be required to enter into any such contract if no such vessels are available at the time the Postal Service seeks to arrange for the transportation of such mail, or if no such vessels can provide service sufficient to meet the actual needs of the Postal Service.

(b) Any rate charged for the international sea transportation of mail of the United States under subsection (a) of this section shall comply with the provisions of the Shipping Act of 1984 (Public Law 98–237). Any such rate shall not be higher than rates charged by such carrier for transporting like goods for private persons.

(c) Notwithstanding any other provision of law, in any case in which two or more common carriers seek to enter into a contract offered by the Postal Service under subsection (a) of this section, the Postal Service shall award such contract by competitive bidding and the duration of any such contract may not exceed 1 year.

(d) The Postal Service shall not give any preference to any common carrier for the carriage of mail by sea based upon the basis of length, height, or width of cargo containers. Unless required by the

physical handling limitations of the destination, no invitation for bids or request for proposals for the carriage of mail may specify the use of containers of any particular length, height, or width.

(e) For purposes of this section, the term "common carrier" means any common carrier, other than any ferryboat running on regular routes, engaged in the transportation by water of passengers or property between the United States (or any of its districts, territories, or possessions) and any foreign country, whether in the import or export trade, except that a cargo boat commonly referred to as an ocean tramp shall not be considered to be a common carrier.

TITLE 39, UNITED STATES CODE

Section 410 of that title

§ 410. Application of other laws

(a) * * *

(b) The following provisions shall apply to the Postal Service:

(1)–(8) * * *

(9) Section 405 of the Merchant Marine Act, 1936, as amended.

○